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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Ruidoso, New Mexico))

MM Docket No. 96-5
RM-8769
DOCKET FILE COPY ORIGINAL

**COMMENTS & COUNTERPROPOSAL
OF
MTD, Inc.**

Comes now **MTD, Inc.** ("MTD"), by Counsel, pursuant to the *Notice of Proposed Rule Making (DA 96-292, released March 21, 1996)* ("NPRM"), and hereby respectfully submits these Comments & Counterproposal in the above-captioned Rule Making proceeding. In support hereof, MTD submits the following:

Background

1. According to the NPRM, Kellie K. Brown ("Brown") has requested the allotment of Channel 268A to Ruidoso, New Mexico, at that community's third aural and second local FM service. The NPRM indicates that the requested allotment can be made without the imposition of a site restriction; Brown states that she will apply for the channel, if allotted.

Counterproposal

2. MTD requests that Channel 268C be allotted to the community of Cloudcroft, New Mexico, rather than Ruidoso. Cloudcroft is more qualified and

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deserving to receive the allotment due to the following factors:

(a) Cloudcroft, New Mexico is listed in the 1990 U.S. Census as a "Census Designated Place" ("CDP") with a population of 636.

(b) Cloudcroft is an incorporated village. Cloudcroft has its own Postal Zip Code of 88317, provides its own local police protection, and has its own Chamber of Commerce. Moreover, Cloudcroft is the home of many local businesses that use the town name, such as Cloudcroft Auto Parts, Cloudcroft Concrete & Materials, Cloudcroft Plumbing, Cloudcroft Realty, Cloudcroft Wrecker. There are also local schools called Cloudcroft Elementary School and Cloudcroft High School.¹

(c) Cloudcroft does not have any local aural broadcast service, nor does it have any radio channels currently allotted to the community.

3. Generally if a community is incorporated or is listed in the U.S. Census, the community qualifies for FCC allotment purposes. *See generally, Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1992); Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991).* The assignment of Cloudcroft's own Postal Zip Code, and the fact that many businesses use the town name in their business name, indicates a connection between the town's business, social and political cultures -- another indicia of community status. *See, Gretna, etc., supra.*

4. Where, as here, two qualified communities are competing for the allocation of a new radio channel, the FCC must choose between the conflicting

¹ This information was obtained from the Cloudcroft Chamber of Commerce (Telephone Number 505-682-2733), the U.S. Census Bureau, and the local telephone book.

proposals and base its decision on the following allotment criteria as set forth in *Revision of FM Policies and Procedures, supra*:

- (1) first full-time aural service;
- (2) second full-time aural service;
- (3) first local service; and
- (4) other public interest matters.

Based upon the above criteria, the community of Cloudcroft is clearly more qualified and deserving of receiving Channel 268 than the community of Ruidoso.

5. From a technical standpoint, the allotment of Channel 268 as a Class C channel to Cloudcroft fully complies with all applicable FCC Rules and Regulations. Attached hereto as **Exhibit No. 1** is a Technical Statement prepared by Jefferson G. Brock of Graham Brock, Inc., wherein it is demonstrated that Channel 268C can be allotted to Cloudcroft at reference coordinated North Latitude 32 - 57 - 30, and West Longitude 105 - 44 - 42.

6. Mr. Brock has also determined that a maximum Class C station on Channel 268 at Cloudcroft would provide 1.0 mV/m service to 67,321 persons within a 25,284.1 square kilometer area. By contrast, the requested Channel 268A at Ruidoso would provide 1.0 mV/m service to only 11,036 persons within a 3,109.2 square kilometer area. Thus, MTD's counterproposal is a more efficient use of the radio spectrum.

Statement of Interest

7. MTD hereby states that, in the event Channel 268A is allotted to

Cloudcroft, New Mexico, it will file an FCC Form 301 Application with the Commission for the issuance of an FM Construction Permit for Channel 268A at Cloudcroft, New Mexico.

Conclusion

WHEREFORE, the above premises considered, MTD respectfully requests that its Comments and Counterproposal be ACCEPTED and that the Commission AMEND §73.202 of the Commission's Rules, as follows:

<u>City & State</u>	<u>Existing</u>	<u>Proposed</u>	
Ruidoso, New Mexico	228C3	228C3	[no change]
Cloudcroft, New Mexico	---	268C	

Respectfully submitted,

MTD, Inc.

By:


Cary S. Tepper

Its Attorney

Booth, Freret & Imlay, P.C.
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20554

(202) 296-9100

May 13, 1996

Exhibit No. 1

(Technical Statement of Jefferson G. Brock)

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

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COUNTERPROPOSAL MM DOCKET #96-54

MTD, INC.

ALLOT CHANNEL 268C

CLOUDCROFT, NEW MEXICO

May 1996

TECHNICAL EXHIBIT

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COUNTERPROPOSAL MM DOCKET #96-54

MTD, INC.

ALLOT CHANNEL 268C

CLOUDCROFT, NEW MEXICO

May 1996

TECHNICAL STATEMENT

1. This Technical Statement and attached exhibits were prepared on behalf of MTD, Inc. ("MTD"), who seeks to allot Channel 268C to Cloudcroft, New Mexico, as that community's first local FM facility. The proposed allocation at Cloudcroft is mutually exclusive with the request of Kelly K. Brown ("Brown") petitioner in Docket #96-54 seeking to allot Channel 268A to Ruidoso, New Mexico.

BACKGROUND

2. Brown in MM Docket #96-54 seeks to allot Channel 268A to Ruidoso, New Mexico, as that community's second FM service. Presently KWES, Channel 228C3, is licensed to Ruidoso. In addition, AM station KBUY, 1360 kHz, is also licensed to Ruidoso.

REQUESTS

3. MTD herein requests that rather than allotting Channel 268A to Ruidoso that Channel 268C be allocated to Cloudcroft, New Mexico, as that community's first local service. Presently Cloudcroft has no AM or FM service. Cloudcroft is located in Otero County, New Mexico, with

a population of 636 persons according to the 1990 Census. Channel 268C can be allotted to Cloudcroft without the imposition of a site restriction at geographic coordinates North Latitude 32° 57' 30" and West Longitude 105° 44' 42". From these coordinates a 3.16 mV/m contour can be delivered over all of Cloudcroft, New Mexico. Attached as Exhibit #1 is a usable area map which denotes where a transmitter site for Channel 268C at Cloudcroft could be located. Exhibit #2 is a §73.207 spacing study demonstrating that Channel 268C at Cloudcroft is in compliance with the Commission's minimum distance separation requirements to all licensed, applied for or proposed facilities (with the exception of the mutually exclusive request for Channel 268A at Ruidoso, New Mexico).¹

4. Cloudcroft, New Mexico, is located within the boundaries of the Lincoln National Forest which comprises a large portion of Otero County. While there is privately held property in and around the Cloudcroft area, the petitioner has determined that there is a U.S. Forest Service electronics site, designated as the Wofford Electronic Site, located only 4.5 kilometers from the city reference of Cloudcroft at which Channel 268C could be implemented in compliance with the Commission's minimum distance separation requirements. Attached as Exhibit #3 is a §73.207 spacing study demonstrating that from the Wofford Electronic Site Channel 268C is fully spaced to all licensed, applied for or proposed facilities (with the exception of the Channel 268A request at Ruidoso).

1) Since this proposal is within 320 kilometers of the U.S./Mexican border, an analysis has been made to determine whether this proposal is in accord with the 1992 Agreement between the United States of America and the United Mexican States relating to FM broadcast service in the band from 88 to 108 MHz. Based on Annex 1 of that Agreement, §1.2.1, Table 2, the proposed allocation of Channel 268C to Cloudcroft, New Mexico, is in compliance with the spacing requirements to all Mexican facilities, allocations and applications. As indicated on Exhibit #1, the nearest Mexican facility is Channel 268B at Las Palomas CH, which is 7.71 kilometers clear of the proposed Cloudcroft, New Mexico, Class C request.

5. Therefore, MTD proposes the following changes to the Commission's Table of FM

Allotments:

Cloudcroft, New Mexico

Present

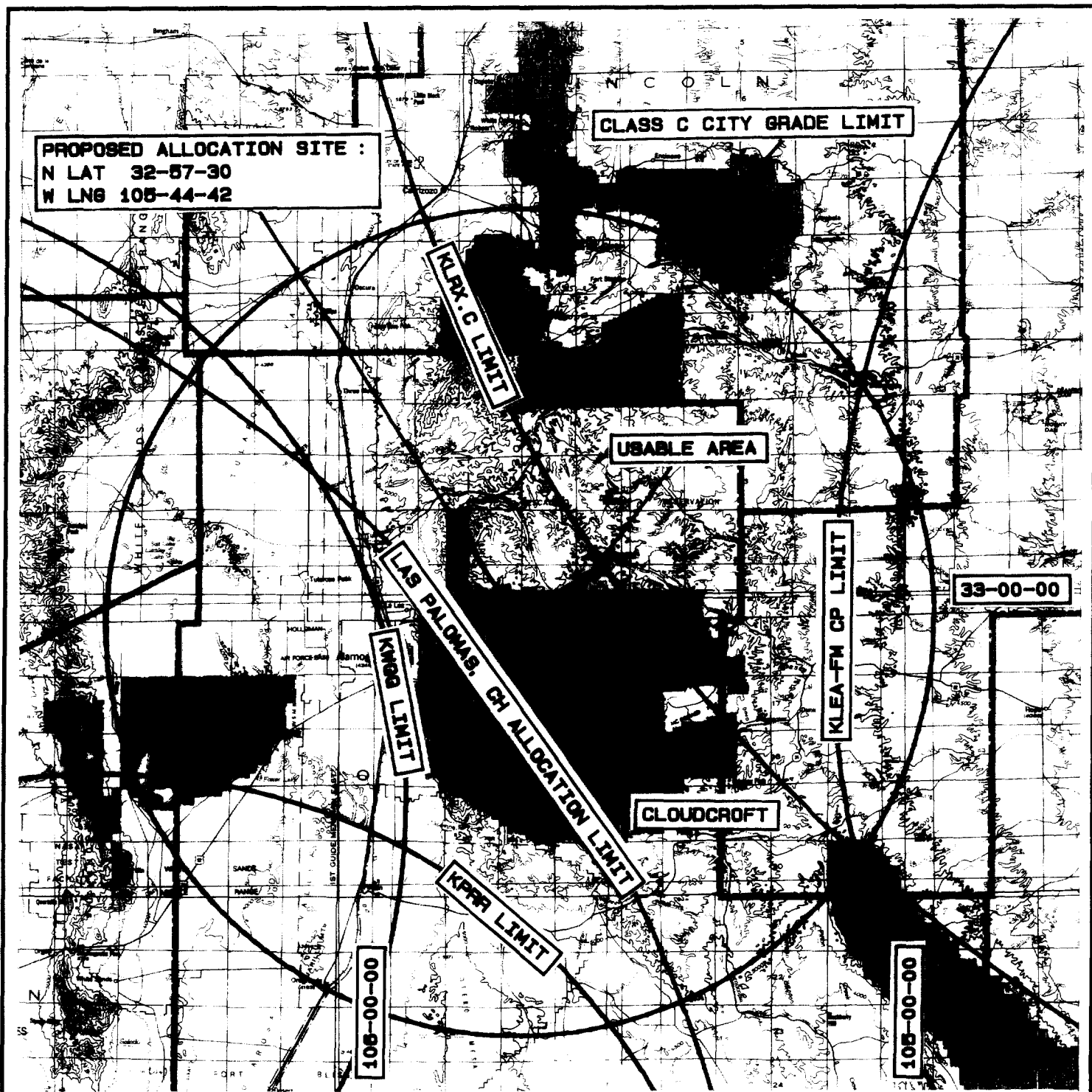
Proposed

268C

6. Based on the site proposed for the Cloudcroft facility, a maximum Class C station on Channel 268 would deliver 1.0 mV/m service to 67,321 persons in 25,284.1 square kilometers and provide Cloudcroft, a community of 636 persons, with its first locally licensable facility. By comparison a maximum Class A facility at Ruidoso while providing the community with its third radio facility would deliver service 1.0 mV/m service to only 11,036 persons in 3,109.2 square kilometers. Therefore, a Class C facility on Channel 268 at Cloudcroft would provide service to more people than a Class A at Ruidoso.

7. When Channel 268C is allotted to Cloudcroft, New Mexico, MTD, Inc., will file, on a timely basis, an application seeking authority to construct the new FM station. Upon a grant of that construction permit MTD will promptly build the facility and commence operation on Channel 268C.

8. The foregoing Technical Statement and attached exhibits were prepared on behalf of MTD, Inc., by Graham Brock, Inc., its Technical Consultants. All information relating to FM facilities and allotments was extracted from the NTIA database as updated April 26, 1996. We assume no liability for errors or omissions in that database which may be adverse to the requests contained herein. All data related to population was extracted from the PL94-171 computer files, 1990 Census.



CHANNEL 268C USABLE AREA

MAP IS A PHOTO REDUCED PORTION OF THE
1: 500, 000 SCALE U.S.G.S. BASE MAP OF
THE STATE OF NEW MEXICO.

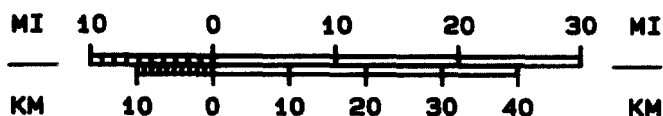
EXHIBIT #1

COMMENTS & COUNTERPROPOSAL
MM DOCKET #96-54

MTD, INC.

ALLOT CHANNEL 268C
CLOUDCROFT, NEW MEXICO

May 1996



GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

ALLOCATION STUDY FOR CLOUDCROFT, NEW MEXICO
USING CITY CENTER COORDINATES AS REFERENCE

REFERENCE	CLASS C	DISPLAY DATES
32 57 30 N	Current rules spacings	DATA 04-26-96
105 44 42 W	CHANNEL 268 -101.5 MHz	SEARCH 05-08-96

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD268	268C	Cloudcroft	NM	0.0	0.00	290.0	-290.00
AD	33 20 00	105 40 54	0.000 kW	OM	0.0	180.2	
MTD, Inc.							
>Counterproposal - MM Docket #96-54 - Mexican Concurrence Required							
AL269	269B	Las Palomas	CH	232.2	222.71	215.0	7.71
AL	31 43 00	107 36 20	0.000 kW	OM	138.4	133.6	
KLRX.C	268C1	Clovis	NM	55.0	286.56	270.0	16.56
CP HN	34 24 31	103 11 15	60.000 kW	54M	178.1	167.8	
Thelese Broadcast International					BPH-931123MA		960314
KWQQ	266C	Hatch	NM	256.9	127.36	105.0	22.36
LI CN	32 41 35	107 04 06	100.000 kW	315M	79.2	65.3	
John E. Daniels					BLH-940415KD		
KPRR	271C	El Paso	TX	208.2	146.58	105.0	41.58
LI EN	31 47 34	106 28 47	100.000 kW	363M	91.1	65.3	
Transcontinental Broadcasting					BLH-860813KB		
KLEAFM	269C3	Lovington	NM	90.2	226.76	176.0	50.76
CPM CN	32 56 30	103 19 12	25.000 kW	88M	140.9	109.4	
Lea County Broadcasting Company					BMPH-941209ID		960131

CHANNEL 268C ALLOCATION STUDY

EXHIBIT #2
COMMENTS & COUNTERPROPOSAL
MM DOCKET #96-54
MTD, INC.
ALLOT CHANNEL 268C
CLOUDCROFT, NEW MEXICO
May 1996

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

SPACING STUDY FOR CLOUDCROFT, NEW MEXICO
USING WOFFORD ELECTRONICS SITE AS REFERENCE

REFERENCE 32 59 15 N 105 42 40 W	CLASS C Current rules spacings CHANNEL 268 -101.5 MHz	DISPLAY DATES DATA 04-26-96 SEARCH 05-08-96
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CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD268 AD	268C 32 57 30	Cloudcroft 105 44 42	NM 0.000 kW	224.3 0M	4.53 2.8	290.0 180.2	-285.47
MTD, Inc.							
>Counterproposal MM Docket #96-54 - Mexican Concurrence Required							
KLRX.C CP HN	268C1 34 24 31	Clovis 103 11 15	NM 60.000 kW	55.2 54M	282.11 175.3	270.0 167.8	12.11
Thelese Broadcast International					BPH-931123MA 960314		
AL269 AL	269B 31 43 00	Las Palomas 107 36 20	CH 0.000 kW	232.1 0M	227.20 141.2	215.0 133.6	12.20
KWQQ LI CN	266C 32 41 35	Hatch 107 04 06	NM 100.000 kW	255.9 315M	131.20 81.5	105.0 65.3	26.20
John E. Daniels					BLH-940415KD		
KPRR LI EN	271C 31 47 34	El Paso 106 28 47	TX 100.000 kW	208.7 363M	150.94 93.8	105.0 65.3	45.94
Transcontinental Broadcasting					BLH-860813KB		
KLEAFM CPM CN	269C3 32 56 30	Lovington 103 19 12	NM 25.000 kW	90.7 88M	223.61 139.0	176.0 109.4	47.61
Lea County Broadcasting Company					BMPH-941209ID 960131		

CHANNEL 268C SPACING STUDY

EXHIBIT #3
COMMENTS & COUNTERPROPOSAL
MM DOCKET #96-54
MTD, INC.
ALLOT CHANNEL 268C
CLOUDCROFT, NEW MEXICO
May 1996

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

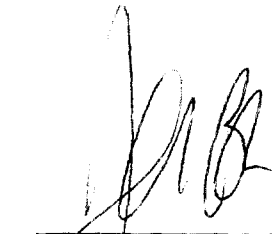
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by MTD, Inc., to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

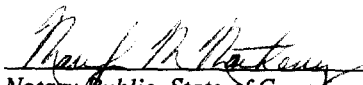
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 8th day of May, 1996.



Jefferson G. Brock
Affiant

Sworn to and subscribed before me
this the 8th day of May, 1996



Notary Public, State of Georgia
My Commission Expires: September 12, 1999

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 13th day of May, 1996, I have served a copy of the foregoing "**Comments & Counterproposal of MTD, Inc.**" first-class, postage-prepaid, on the following:

*John A. Karousos
Chief, Allocations Branch
Federal Communications Commission
2025 M Street, N.W.; Room 8010
Washington, D.C. 20554

Kellie K. Brown
P.O. Box 4396
Ruidoso, NM 88345
(Petitioner)


Cary S. Tepper, Esq.

*/ indicates delivery by hand